

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 40

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte LETHA M. HINES  
and ROBB E. OLSEN

Appeal No. 2004-1820  
Application No. 08/383,550

ON BRIEF

Before FRANKFORT, STAAB, and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Letha M. Hines et al. originally took this appeal from the final rejection of claims 1, 4 through 10, 12 through 17 and 19. The appellants have since canceled claims 10 and 15 and amended claims 12 and 15 through 17. Thus, the appeal now involves claims 1, 4 through 9, 12 through 14, 16, 17 and 19, all of the claims currently pending in the application.

THE INVENTION

The invention relates to "sanitary napkins which improve body contact through a convex upward facing configuration"

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Appeal No. 2004-1820  
Application No. 08/383,550

(specification, page 1). Representative claim 1 reads as follows:

1. A sanitary napkin having a longitudinal center line and a lateral centerline orthogonal thereto, and having longitudinal side margins and transverse ends, said sanitary napkin comprising:

a liquid pervious topsheet;  
a liquid impervious backsheet; and

an absorbent core intermediate said topsheet and said backsheet, said core having two major faces, a first major face oriented toward said topsheet and a second major face oriented toward said backsheet, said first major face having a discontinuous first line of weakness therein, said line of weakness being longitudinally concave towards said lateral centerline, said line of weakness comprising discrete sites, said discrete sites being bilaterally staggered about said line of weakness wherein said sanitary napkin deforms to a convex upward configuration while in use.

#### THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

McNair	4,285,343	Aug. 25, 1981
Glassman	4,758,240	Jul. 19, 1988
Buell	5,197,959	Mar. 30, 1993
Sneller et al., International Patent Document (Sneller)	WO 93/12747	Jul. 08, 1993

Appeal No. 2004-1820  
Application No. 08/383,550

THE REJECTIONS

Claims 1, 4 through 9, 16, 17 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Buell in view of Glassman and Sneller.

Claims 12 through 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Buell in view of Glassman, Sneller and McNair.

Attention is directed to the main and reply briefs (Paper Nos. 21 and 24) and the final rejection and answer (Paper Nos. 12 and 23) for the respective positions of the appellants and the examiner regarding the merits of these rejections.<sup>1</sup>

DISCUSSION

Buell, the examiner's primary reference, discloses a sanitary napkin 10 comprising a liquid permeable topsheet 45, an absorbent core 40, and a liquid impermeable backing in the form of a deformation element 20. The deformation element assumes a convex upward configuration when the napkin is subjected to lateral compressive forces exerted by the wearer's thighs. In assuming this configuration, the deformation element causes the

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<sup>1</sup> In the final rejection, certain claims also stood rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The record shows that the examiner has since withdrawn this rejection.

Appeal No. 2004-1820  
Application No. 08/383,550

core and topsheet, and hence the napkin as a whole, to have a convex upward configuration which closely conforms to the wearer's anatomy.

As conceded by the examiner (see page 3 in the final rejection), Buell does not respond to the limitations in independent claim 1, or the corresponding limitations in independent claim 16, requiring the first major (i.e., upper) face of the core to have a discontinuous first line of weakness which is longitudinally concave towards the lateral centerline of the napkin and which comprises discrete sites bilaterally staggered about the line of weakness whereby the sanitary napkin deforms to a convex upward configuration while in use. To overcome these deficiencies, the examiner turns to Glassman and Sneller.

Glassman discloses a substantially flat sanitary pad having "a novel bilateral softening feature, allowing the opposing thighs to equally compress laterally the sanitary pad . . . towards its longitudinal center . . . contrary to the performance of most known sanitary pads wherein the lateral side margins thereo[f] fold downwardly; thus creating an inverted 'U'" (column 1, lines 58 through 64). The bilateral softening feature consists of a series of relatively deep grooves and/or

Appeal No. 2004-1820  
Application No. 08/383,550

depressions 16-18 heat pressed into the top surface and soft filler 15 of the pad 11 to form weakened areas which permit lateral accordion-like compression of the pad when worn.

Sneller discloses a sanitary napkin 20 having a pair of channels 34 embossed into its topsheet 24 and absorbent core 28 to create weakened areas that enhance controlled bunching of the napkin when worn.

In proposing to combine Buell, Glassman and Sneller to reject independent claims 1 and 16, the examiner submits that

[t]o employ lines of weakness, i.e. - discrete site[s], as taught by Sneller and Glassman on the Buell device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would enhance the mimicking of the configurations of the deformation element by the core, i.e. - controlled bunching, and the desirability of such on the Buell device. In regard to the claim limitation of the discrete sites being bilaterally staggered about the line of weakness, to employ discrete sites bilaterally staggered as taught by Glassman would be obvious to one of ordinary skill in the art in view of the recognition that such would further increase the compressibility of the napkin [final rejection, page 4].

Buell, however, gives no reason to believe that the deformation element 20 is in any way inadequate to provide the sanitary napkin 10 with the desired convex upward configuration. Hence, the examiner's implicit assumption that the action of the deformation element needs enhancement is unfounded. Furthermore, even if the artisan would have deemed Buell's deformation element

Appeal No. 2004-1820  
Application No. 08/383,550

insufficient to some extent, Glassman and Sneller would not have furnished any suggestion to correct the perceived deficiency so as to arrive at the subject matter recited in claims 1 and 16. Glassman teaches that the grooves and depressions 16-18 in sanitary pad 11 promote lateral compression of the pad and prevent the formation of an inverted "U" shape. As the Buell reference expressly desires an convex upward configuration, i.e., an inverted "U" shape, it teaches away from the proposed modification in view of Glassman. Moreover, Glassman provides no reasonable support for the examiner's assertion that the depressions disclosed therein are bilaterally staggered about an intended line of weakness. Sneller's disclosure of embossed channels to control bunching is similarly irrelevant to Buell's stated objectives. Thus, the only suggestion to combine Buell, Glassman and Sneller in the manner advanced by the examiner stems from hindsight knowledge impermissibly derived from the appellants' disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1 and 16, and dependent claims 4 through 9, 17 and 19, as being unpatentable over Buell in view of Glassman and Sneller.

Appeal No. 2004-1820  
Application No. 08/383,550

As the examiner's application of McNair does not cure the foregoing shortcomings of Buell, Glassman and Sneller with respect to parent claim 1, we also shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 12 through 14 as being unpatentable over Buell in view of Glassman, Sneller and McNair.

SUMMARY

The decision of the examiner to reject claims 1, 4 through 9, 12 through 14, 16, 17 and 19 is reversed.

Appeal No. 2004-1820  
Application No. 08/383,550

REVERSED

*Charles E. Frankfort*

CHARLES E. FRANKFORT )  
Administrative Patent Judge )

) BOARD OF PATENT

*Lawrence J. Staab*

LAWRENCE J. STAAB )  
Administrative Patent Judge )

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*John P. McQuade*

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Appeal No. 2004-1820  
Application No. 08/383,550

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